in that state as a beverage for himself and family, is admitted. As to this portion of the liquid we are of the opinion that he is guilty of a violation of the statute. Webster's Dictionary defines the word manufacture' to mean, 'To make (wares, machinery, or other products) by hand, by machinery, or by other agency.' * * * We are of the opinion that the word 'manufacture,' as used in section 5 of the act referred to, means to 'make' irrespective of the quantity produced, or the use to which it is to be put.

"This is made clear by section 6, which provides that the provisions of the act shall not be construed to prevent any one from manufacturing for his own use unfermented wine or nonintoxicating cider, wine for sacramental purposes, or to prevent the manufacture of vinegar or nonintoxicating cider for sale. In this case the exception proves the rule as to those things not excepted. * * * It is claimed that because the defendant did no affirmative act to produce fermentation, but simply put the grape juice into a vat and 'let nature take its course,' he did not manufacture the wine; but this contention is unsound. Under such a construction, no wine ever has been or ever will be made by human agency. The stipulation admits, in substance, that defendant placed the juice in the vat, and there allowed it to ferment, and that his intent was to use the greater portion as a beverage for himself and family as food with their meals, and to allow the remainder to become vinegar. He but pursued the usual process of making wine. The well-known action of the air and the germs therefrom which produce fermentation were utilized and intended to be utilized in the process of manufacture. Some of the most important compounds known to commerce and medicine are manufactured by bringing two or more substances in contact, and allowing the chemical forces of nature to produce a new compound or substance.

"The question is not as to the policy of the law, but as to the power to enact it, and, this being found to exist, the judgment [of conviction] will be affirmed."

---

**Limitation of Actions; Suit by Government—Statutory Action for Injury to Property.**—In United States *v.* Denver & R. G. R. R., in the United States Circuit Court of Appeals, Eighth Circuit (March, 1917, 211 Fed. 614), it was laid down that while the Government is bound by no Statute of Limitations in a suit brought by it as a sovereign to enforce a public right, when it sues a railroad company under Act Colo., April 9, 1913, for the value of timber on Government land destroyed by fire it sues as a property owner with no greater rights or privileges than other property owners, and its action is barred when not brought within the time prescribed by the statute. The court said in part:

"This statute imposes upon the railroad company an absolute lia-

bility, and clearly creates, as we view it, a cause of action which did not exist at common law. The statute provides that suit must be brought within two years, and we think a failure to bring the suit within the time prescribed by the statute acts as a limitation of the liability itself, and in this respect differs from the ordinary Statutes of Limitation which affect the remedy only. We do not deem it necessary to do more than call attention to one or two of the many cases where this question has been before the courts.

In Davis *v.* Mills (194 U. S. 451, 24 Sup. Ct. 692, 48 L. Ed. 1067) the court said:

" 'The ordinary limitations of actions are treated as laws of procedure and as belonging to the lex fori, as affecting the remedy only and not the right. But in cases where it has been possible to escape from that qualification by a reasonable distinction courts have been willing to treat limitations of time as standing like other limitations and cutting down the defendant's liability wherever he is sued. The common case is where a statute creates a new liability and in the same section or in the same act limits the time within which it can be enforced, whether using words of condition or not.'

"In Theroux *v.* Northern Pacific R. R. (64 Fed. 84, 12 C. C. A. 52) this court, after citing several cases, among them the case of Pittsburg, C. & St. L. R. R. *v.* Hine (25 Ohio St. 629), where it was decided that a proviso contained in the statute creating a new cause of action which limited the right to sue to two years is a condition qualifying the right of action and not a mere limitation of the remedy, said:

" 'It must be accepted, therefore, as the established doctrine that where a statute confers a new right which by the terms of the act is enforcible by suit only within a given period, the period allowed for its enforcement is a constituent part of the liability intended to be created and of the right intended to be conferred.'

"The time fixed by the statute within which an action may be brought is a condition of the right to sue at all, and a complaint which fails to state that the action was brought within that time fails to state a cause of action and is subject to demurrer (B. & M. R. R. *v.* Hurd, 108 Fed. 117, 47 C. C. A. 615, 56 L. R. A. 193; Kavanagh *v.* Folsom, C. C. 181 Fed. 401; American Ry. *v.* Coronas, 230 Fed. 545, 144 C. C. A. 599, L. R. A. 1916E, 1095; The Harrisburg, 119 U. S. 199, 214, 7 Sup. Ct. 140, 30 L. Ed. 358).

"In this case the fire occurred in June, 1908, and the action was commenced in August, 1914, more than six years after the cause of action accrued. It can not, therefore, be maintained, unless the fact that the Government is the plaintiff relieves it from the limitation fixed by the statute. It is established law that the Government is not bound by any Statute of Limitations in a suit brought by it as a sovereign to enforce a public right, and the question at

once arises, is this such a suit? We think not, but rather a suit by it as a body politic or artificial person having the power to hold property as other persons, natural or artificial, to enfore a civil right. As a corporation or body politic the plaintiff may undoubtedly bring suit to protect its property located in any State, either in the State courts or in its own tribunals administering the same laws. As an owner of property it has the same right to have it protected by local laws that other persons have (Cotton *v.* United States, 11 How. 52 U. S. 229, 13 L. Ed. 675; Camfield *v.* United States, 167 U. S. 518, 17 Sup. Ct. 864, 42 L. Ed. 260; Bly *v.* United States, Fed. Cas. No. 1518). Its rights and remedies in relation to its property are usually such as apply to other landowners within the State where the action is brought, and it is to be treated like other persons owning lands therein and subject to local laws (United States *v.* Smith, 94 U. S. 214, 24 L. Ed. 115; United States *v.* Stinson, 197 U. S. 200, 25 Sup. Ct. 426, 49 L. Ed. 724; Handford *v.* United States, 92 Fed. 881, 35 C. C. A. 75; Hemmer *v.* United States, 204 Fed. 898, 123 C. C. A. 194; United States *v.* Detroit Lumber Co., 131 Fed. 668, 67 C. C. A. 1). In Walker *v.* United States (C. C. 139 Fed. 409) the court said:

"'The underlying principle of all the decisions is that when the sovereign comes into court to assert a pecuniary demand against the citizen the court has authority, and is under duty, to withhold relief to the sovereign, except upon terms which do justice to the citizen or subject, as determined by the jurisprudence of the forum in like subject-matter between man and man.'

"And in Mountain Copper Co. *v.* United States (142 Fed. 625, 73 C. C. A. 621 which was a suit to enjoin the continuance of a nuisance, in the course of its opinion the court said:

"'In considering the case it is important to remember that the question to be determined is one between the United States and the defendant company only; the Government suing not in its sovereign capacity but as a landowner, to enjoin alleged injuries to its property, not directly, but indirectly, through the maintenance of an alleged nuisance by the defendant on its own property. . . . It is the well-established law that when the Government comes into a court asserting a property right it occupies the position of any and every other suitor. Its rights are precisely the same; no greater, no less.'

"From the foregoing and many other cases that might be cited to the same effect it will be seen that in this class of actions the plaintiff has no special privileges as a litigant. Its rights are no greater, no higher, no better, and no less than those of an individual. It is perfectly clear that if this action had been brought by a private landowner it could not be maintained under this statute, and we think the plaintiff is in no better position."